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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 MICHAEL CLARK,

10 Plaintiff,

11 vs.

12 OFFICER PETERSON, Individually,

13 Defendant.
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Case No. 2:09-CV-01865-RLH-(PAL)

ORDER

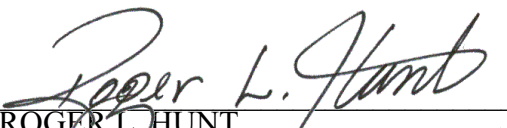
15 Plaintiff has filed an amended complaint (#24). The court has reviewed it, and the
16 court will dismiss this action.

17 When a “prisoner seeks redress from a governmental entity or officer or employee of
18 a governmental entity,” the court must “identify cognizable claims or dismiss the complaint, or any
19 portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon
20 which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from
21 such relief.” 28 U.S.C. § 1915A(b). Rule 12(b)(6) of the Federal Rules of Civil Procedure provides
22 for dismissal of a complaint for failure to state a claim upon which relief can be granted. Review
23 under Rule 12(b)(6) is essentially a ruling on a question of law. North Star Intern. v. Arizona Corp.
24 Comm’n, 720 F.2d 578, 580 (9th Cir. 1983). In considering whether the plaintiff has stated a claim
25 upon which relief can be granted, all material allegations in the complaint are accepted as true and
26 are to be construed in the light most favorable to the plaintiff. Russell v. Landrieu, 621 F.2d 1037,
27 1039 (9th Cir. 1980). Allegations of a pro se complainant are held to less stringent standards than
28 formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam).

1 Plaintiff alleges that defendant threw a hard-boiled egg into a crowd of inmates at
2 High Desert State Prison. “The Eighth Amendment’s prohibition of ‘cruel and unusual’
3 punishments necessarily excludes from constitutional recognition de minimis uses of physical force,
4 provided that the use of force is not of a sort repugnant to the conscience of mankind.” Hudson v.
5 McMillian, 503 U.S. 1, 9-10 (1992) (citations and quotation marks omitted). Although throwing an
6 egg might appear to be unnecessary, it is also the type of force that is so minimal that it does not
7 amount to a constitutional violation. Cf. Hudson, 503 U.S. at 9.

8 IT IS THEREFORE ORDERED that this action is **DISMISSED** for failure to state a
9 claim upon which relief can be granted. The clerk of the court shall enter judgment accordingly.

10 DATED: August 30, 2010.

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14 ROGER L. HUNT
15 Chief United States District Judge
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